

## **Part 4**

### **Exempt Property and Allowances**

#### **75-2-401 Exempt property and allowances -- Applicable law.**

This part applies to the estate of a decedent who dies domiciled in Utah. Rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in Utah are governed by the law of the decedent's domicile at death.

Repealed and Re-enacted by Chapter 39, 1998 General Session

#### **75-2-402 Homestead allowance.**

A decedent's surviving spouse is entitled to a homestead allowance of \$22,500. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$22,500 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims of the estate. Unless otherwise provided by the will or governing instrument, the homestead allowance is chargeable against any benefit or share passing to the surviving spouse, minor, or dependent child, by the will of the decedent, by intestate succession, by way of elective share, and by way of nonprobate transfers as defined in Sections 75-2-205 and 75-2-206.

Amended by Chapter 93, 2010 General Session

#### **75-2-403 Exempt property.**

In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding \$15,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than \$15,000, or if there is not \$15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$15,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. Unless otherwise provided by the will or governing instrument, the exempt property allowance is chargeable against any benefit or share passing to the surviving spouse, if any, or if there is no surviving spouse, to the decedent's children, by the will of the decedent, by intestate succession, by way of elective share, and by way of nonprobate transfers as defined in Sections 75-2-205 and 75-2-206.

Amended by Chapter 93, 2010 General Session

#### **75-2-404 Family allowance.**

- (1) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed

claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance.

- (2) Unless otherwise provided by the will or governing instrument, the family allowance is chargeable against any benefit or share passing to the surviving spouse or minor children, by the will of the decedent, by intestate succession, by way of elective share, and by way of nonprobate transfers as defined in Sections 75-2-205 and 75-2-206. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

Repealed and Re-enacted by Chapter 39, 1998 General Session

**75-2-405 Source, determination, and documentation.**

- (1) If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding \$27,000 or periodic installments not exceeding \$2,250 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.
- (2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under Subsection 75-2-212(2).

Amended by Chapter 93, 2010 General Session